

Attachment No. PC 2

City Council Resolution No. 2011-86

RESOLUTION NO. 2011-86

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH ADOPTING A MITIGATED NEGATIVE DECLARATION, FINDING TRAFFIC STUDY NO. TS2011-001 IN COMPLIANCE WITH THE TRAFFIC PHASING ORDINANCE, APPROVING GENERAL PLAN AMENDMENT NO. GP2010-009, SITE DEVELOPMENT REVIEW NO. SR2010-001, CONDITIONAL USE PERMIT NO. 2010-024, VARIANCE NO. 2010-004, AND PARCEL MAP NO. 2010-008, FOR A COMMERCIAL DEVELOPMENT PROJECT LOCATED AT 100-300 WEST COAST HIGHWAY (PA2010-114)

THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by VBAS Corporation, with respect to properties located at 100-300 West Coast Highway, and legally described as Lots 1, 2, 3, 4, 5, and 6 of Tract No. 1210 requesting approval of a General Plan Amendment (GPA) to accommodate the development of a 23,015-square-foot, two-story commercial building and a three-story parking structure. The following applications were requested or required in order to implement the project as proposed:
 - a. An amendment to the Land Use Element of the General Plan to increase the allowable floor area for the project site from 16,518 square feet (0.5 FAR) to a maximum development limit of 23,015 square feet (approx. 0.7 FAR);
 - b. An amendment to the Zoning Map of the Zoning Code to increase the allowable floor area limitation for the project site from 0.3/0.5 FAR to a maximum development limit of 23,015 square feet (approx. 0.7 FAR);
 - c. A site development review to allow the construction of a 23,015-square-foot, two-story building and a three-story parking structure that will exceed the 31-foot base height limit with a maximum height of 40 feet;
 - d. A conditional use permit to allow for the construction of a parking structure adjacent to a residential zoning district, to modify the off-street parking requirements, allow for the use of off-site parking, and to establish a parking management plan for the site;
 - e. A variance to allow the commercial building and parking structure to encroach five feet into the five-foot rear yard setback;
 - f. A parcel map to consolidate six lots into one parcel; and
 - g. A traffic study pursuant to the City's Traffic Phasing Ordinance.

2. The subject property is located within the Commercial General (CG) Zoning District and the General Plan Land Use Element category is Commercial General (CG).
3. The subject property is not located within the coastal zone.
4. A public hearing was held by the Planning Commission on June 23, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.
5. At the June 23, 2011, Planning Commission hearing, the Planning Commission voted unanimously to deny the project without prejudice.
6. On July 1, 2011, the Planning Commission's decision to deny the applicant's request was appealed by City Councilmember Edward Selich. The appeal was filed to allow the City Council an opportunity to review the project since the project sits at the western entry into the Mariner's Mile corridor, which is an area the City is trying to revitalize given the poor condition of the properties.
7. Due to the concerns expressed by the community and the Planning Commission at the June 23, 2011, Planning Commission hearing, the applicant modified the application request by reducing the project gross floor area from 23,015 square feet (approx 0.7 FAR) to 19,905 square feet (approx. 0.6 FAR), increased on-site parking supplies, and eliminating the need for off-site parking.
8. A public hearing was held by the City Council on August 9, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the City Council at this meeting.
9. Pursuant to Section 20.64.030.C, the public hearing was conducted "de novo," meaning that it was a new hearing and the decision being appealed has no force or effect as of the date the call for review was filed.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. An Initial Study and Mitigated Negative Declaration have been prepared in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3.
2. The draft Mitigated Negative Declaration was circulated for a 30-day comment period beginning on April 11, 2011 and ending on May 11, 2011. The contents of the environmental document and comments on the document were considered by the City Council in its review of the proposed project.

3. On the basis of the entire environmental review record, the proposed project, with mitigation measures, will have a less than significant impact upon the environment and there are no known substantial adverse affects on human beings that would be caused. Additionally, there are no long-term environmental goals that would be compromised by the project, nor cumulative impacts anticipated in connection with the project. The mitigation measures identified and incorporated in the Mitigation Monitoring and Reporting Program are feasible and will reduce the potential environmental impacts to a less than significant level.
4. The modifications proposed by the applicant do not constitute "substantial revisions" that would warrant recirculation of the MND pursuant to CEQA Guidelines Section 15073.5.
5. The Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program attached as Exhibit A is hereby adopted. The document and all material, which constitute the record upon which this decision was based, are on file with the Planning Department, City Hall, 3300 Newport Boulevard, Newport Beach, California.
6. The City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. REQUIRED FINDINGS.

1. The project site is located within the Mariner's Mile commercial corridor. The Land Use Element of the General Plan designates the site General Commercial (CG), which is intended to provide for a wide variety of commercial activities primarily oriented to serve citywide or regional needs. The proposed commercial building is consistent with this designation.
2. General Plan Policy LU 3.2 encourages the enhancement of existing neighborhoods, districts, and corridors, by allowing for re-use and infill with uses that are complementary in type, form, scale, and character. The policy states that changes in use and/or density/intensity should be considered only in those areas that are economically underperforming, are necessary to accommodate Newport Beach's share of projected regional population growth, improve the relationship and reduce commuting distance between home and jobs, or enhance the values that distinguish Newport Beach as a special place to live for its residents. The scale of growth and new development shall be coordinated with the provision of adequate infrastructure and public services, including standards for acceptable traffic level of service.

The proposed GPA and companion Code Amendment for increased intensity is consistent with General Plan Policy LU 3.2 as follows:

- a. The General Plan recognizes the Mariner's Mile corridor as a location that needs revitalization.
 - b. The increased intensity would provide an economic stimulus needed to accommodate the redevelopment of six lots into one commercial development.
 - c. As stated in the General Plan, Newport Beach residents desire high quality development and have identified the Mariner's Mile corridor is an area that needs revitalization.
 - d. Redevelopment of the subject property helps implement the goal of revitalizing the corridor and may encourage the redevelopment of other underperforming properties within the Mariner's Mile corridor. The project's high quality and distinctive architectural features, such as the corner tower element and cupola, will serve as a focal point and anchor into the entry into the Mariner's Mile corridor. In addition, the project's landscaping and water feature within the public right-of-way will significantly improve the streetscape in the corridor.
 - e. The traffic impact analysis that was prepared for the project found that the addition of project-related traffic would not have a significant impact at any of the study intersections.
 - f. The project site is served by existing infrastructure and public services. The proposed increase in intensity will not necessitate any expansion of existing infrastructure. The project will extend the transition area from three lanes to two lanes (lane drop extension) on West Coast Highway, which will improve safety of westbound traffic and improve access to the site. The removal of the three existing power poles and undergrounding of the power lines will provide a public benefit.
3. Charter Section 423 requires that all proposed General Plan Amendments be reviewed to determine if the square footage (for non-residential projects), peak hour vehicle trip, or dwelling units thresholds would be exceeded as the means to determine whether a vote by the electorate would be required to approve the General Plan Amendment. Pursuant to Council Policy A-18, voter approval is not required as the proposed General Plan Amendment represents a cumulative increase (including prior amendments) of 3,387 square feet and an increase of 10.16 a.m. and 13.55 p.m. peak hour trips. Therefore, the project and prior amendments do not cumulatively exceed Charter Section 423 thresholds as to require a vote of the electorate
4. Municipal Code Chapter 15.40 (Traffic Phasing Ordinance, or TPO) requires that a traffic study be prepared and findings be made before building permits may be approved if a proposed project will generate in excess of 300 average daily trips (ADT). For the purposes of preparing the traffic analysis for this project, the originally

proposed 23,015-square-foot commercial building was assumed to include 12,722 square feet of quality restaurant, 7,293 square feet of specialty retail, and 3,000 square feet of medical office. Combined, this land use mix is forecast to generate 1,292 additional trips per day, including 16 additional a.m. peak hour trips and 70 p.m. peak hour trips. This land use mix yields a higher project trip generation than the actual currently proposed land use mix of 9,557 square feet of restaurant, 8,651 square feet of retail, and 1,697 square feet of medical office and, therefore, the traffic analysis prepared for this project is considered to be a conservative as it over-estimates average daily trips. Pursuant to Section 15.04.030.A, the project shall not be approved unless certain findings can be made. The following findings and facts in support of such findings are set forth:

Finding:

- A. *That a traffic study for the project has been prepared in compliance with this chapter and Appendix A.*

Facts in Support of Finding:

- A-1. A traffic study, entitled "Mariner's Pointe Traffic Impact Analysis dated February 17, 2011" was prepared by RBF Consulting under the supervision of the City Traffic Engineer pursuant to the TPO and its implementing guidelines. A total of 12 primary intersections in the City were evaluated.

Finding:

- B. *That based on the eight of the evidence in the administrative record, including the traffic study, one of the findings for approval in subsection (B) can be made:*

15.40.030.B.1 Construction of the project will be completed within 60 months of project approval; and

15.40.030.B.1(a) The project will neither cause nor make an unsatisfactory level of traffic service at any impacted intersection.

Facts in Support of Finding:

- B-1. Construction of the project is anticipated to be completed in 2012. If the project is not completed within sixty (60) months of this approval, preparation of a new traffic study will be required.
- B-2. The traffic study indicates that the project will increase traffic on six of the 12 study intersections by one percent (1%) or more during peak hour periods one year after the completion of the project and, therefore, these six intersections require further Intersection Capacity Utilization (ICU) analysis.

- B-3. Utilizing the ICU analysis specified by the TPO, the traffic study determined that the six primary intersections identified will continue to operate at satisfactory levels of service as defined by the Traffic Phasing Ordinance, and no mitigation is required.
- B-4. Based on the weight of the evidence in the administrative record, including the traffic study, the implementation of the proposed project will neither cause nor make worse an unsatisfactory level of traffic service at any impacted primary intersection within the City of Newport Beach.

Finding:

- C. *That the project proponent has agreed to make or fund the improvements, or make the contributions, that are necessary to make the findings for approval and to comply with all conditions of approval.*

Facts in Support of Finding:

- C-1. Since implementation of the proposed project will neither cause nor make worse an unsatisfactory level of traffic service at any impacted primary intersection within the City of Newport Beach, no improvements or mitigation are necessary.
5. The project consists of 19,905 square feet of commercial floor area and requires Site Development Review, and in accordance with Section 20.52.080 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *Allowed within the subject zoning district.*

Facts in Support of Finding:

- A-1. A commercial building with retail, office, and restaurant uses is a permitted use pursuant to Section 20.20.020 of the Zoning Code. The specific restaurants will be required to obtain separate minor or conditional use permits prior to occupying the building.

Finding:

- B. *Compliance with this Section [20.52.080], the General Plan, this Zoning Code, any applicable specific plan, and other applicable criteria and policies related to the use or structure.*

Facts in Support of Finding:

- B-1. The proposed commercial building is consistent with the CG General Plan land use designation and CG zoning district. A General Plan Amendment and Zoning Map Amendment are requested to allow the proposed increase in intensity.
- B-2. As required by the Zoning Code, a variance has been requested to allow for the encroachment into the rear setback.
- B-3. Land Use Element Policy LU 6.19.6 requires the implementation of landscape, signage, lighting, sidewalk, pedestrian crossing, and other amenities consistent with the Mariner's Mile Strategic Vision and Design Framework. Applicable to this project would be the landscape, lighting, and signage recommendations within the framework. Project signage has not yet been developed and will be submitted for a subsequent review. The project implements the landscaping requirements of the framework by providing the minimum four-foot-wide planter area with continuous hedge and palms plantings. With regard to lighting, the lighting has been designed to respect the views from above and to prevent any light spillage beyond the perimeter of the structure and to eliminate any sources of glare to the residents and motorists. The framework also includes architectural objectives that focus on responsible and sensitive design, with an emphasis on roofs and roof elements to respond to views from above. The proposed building has been designed with tiled tower elements and clean flat roofs with all mechanical equipment screened from view within an enclosure. The third level of the parking structure has been designed with a partial solid roof that screens the resident's view of vehicles and lighting.

Finding:

- C. *The efficient arrangement of structures on the site and the harmonious relationship of the structures to one another and to other adjacent developments; and whether the relationship is based on standards of good design.*

Facts in Support of Finding:

- C-1. The commercial building is configured in such way to resemble a village of two-story buildings, with various roof heights, connected to parking on each of the two levels.
- C-2. Although the project is requesting an increase in height, the building will not block or significantly obstruct any views of the bay or harbor from the residential homes located on the 40 to 50-foot high hillside above the project site. The residential neighbors will maintain their 180 degree private views, although the cupola feature may project slightly into the view plane toward the Bael Bay Bridge.

- C-3. The roof of the commercial building has been designed to respect the views of the residences above and consists of a combination of flat and sloped roof lines. Roof-top mechanical equipment would be fully enclosed within an equipment enclosure and would not be visible from the residences above. The enclosure will have louver vents directed away from the residential properties.
- C-4. The rear two-thirds of the parking structure would be enclosed and will screen the view of the parked vehicles and parking structure lighting from the residents located above the hillside. The parking structure roof will also provide an additional sound buffer to the residents above.
- C-5. The mechanical equipment enclosure has been located at the rear of the commercial building to minimize the bulk of the building as viewed from West Coast Highway.

Finding:

- D. *The compatibility in terms of bulk, scale, and aesthetic treatment of structures on the site and adjacent developments and public areas.*

Facts in Support of Finding:

- D-1. The building and parking structure includes modulated building masses and rooflines and a variation of building materials and colors that would provide visual relief.
- D-2. To break up the bulk and massing of the parking structure as viewed from West Coast Highway, a 1194-square-foot commercial space has been located on the 1st level of the structure, below the ramp, providing a storefront and retail presence in front the of the structure. A tower element will extend this storefront along the face of the structure.
- D-3. The inclusion of architectural elements such as balconies, tower features, awnings, trellises, ornamental windows and railings, and the variation in building elevations and protrusions would also enhance the visual quality of the buildings and street frontage.
- D-4. The project's architectural style, with the use of stone, tile and glass materials, blends in color and form with some development within Mariner's Mile, will provide a high standard of quality for future neighboring development, and complies with the Mariner's Mile Strategic Vision and Design Framework.
- D-5. The tower and cupola feature, the tallest portion of the building, is located at the southeasterly corner of the site, away from the nearest residential and commercial uses. To minimize the bulk of the parking structure as viewed from West Coast Highway, the parking structure roof has been setback 37 feet 5

inches from the front edge of the structure. A trellis runs along the front of the roof to provide increased screening of the parking structure deck as viewed from above and improving the aesthetics of the parking structure as viewed from West Coast Highway. The height of the parking structure along the front façade is 29 feet 4 inches providing a transition to the commercial properties to the west, with the exception of the two tower elements along the front of the parking structure which break up the massing of the parking structure and adds visual interest through a variation in roof heights.

- D-6. The west elevation of the building has been designed with no openings due to its proximity to the side property line and in anticipation that the commercial site to the west may be redeveloped in the future; however, until such time, the west elevation will be visible from motorist traveling south of West Coast Highway. To soften the appearance of this elevation and break up the mass of the parking structure, large green screens would be installed and separated by columns. Architectural detailing has also been added in the form of stoner veneer, columns and borders around the green screens.
- D-7. The rear elevation of the building and parking structure has also been designed as a flat wall with no openings due to its placement on the rear property line and will range in height from approximately 20 feet to 35 feet from existing grade. However, the homes located on the hillside above are located a minimum of 60 feet away and approximately 40-50 feet above the project's pad elevation with views oriented predominately over the project site towards the bay and harbor, and therefore, will not be significantly impacted by the height and bulk of the structures.

Finding:

- E. *The adequacy, efficiency, and safety of pedestrian and vehicular access, including drive aisles, driveways, and parking and loading spaces.*

Facts in Support of Finding:

- E-1. The project would eliminate one existing driveway access off Dover Drive and would consolidate four existing driveways along West Coast Highway into two driveways. Therefore, the project minimizes the number of driveways along West Coast Highway, thereby reducing potential conflicts and increasing vehicular safety. The lane drop extension of Coast Highway will also enhance the safety of the highway, while providing safe access from the site, as determined by the City Traffic Engineer.
- E-2. The project proves adequate sight distance at each driveway, as determined by the City Traffic.

- E-3. The proposed parking structure has been designed to accommodate and provide safe access for emergency, delivery, and refuse collections vehicles, as determined by the City Traffic.
 - E-4. The project would include enhanced pedestrian walkways that provide access between the various uses and areas within the project site and to the surrounding public sidewalks and uses.
 - E-5. The existing bus stop along the project frontage would be relocated and a new designated "Bus Only" area would be created between the two driveways.
 - E-6. The project results in a total peak parking demand of 149 spaces, which can be entirely provided on site within the 150-space parking structure without any adjustments in parking requirements. In addition, a shared parking analysis prepared from the project indicates that because of the different peak hours of operation of the assumed mix of tenants, not all of the uses within the project will require their full allotment of parking spaces at the same time. The analysis indicates that the total parking required has two separate peaks: 1) one peak during the early afternoon with a total demand for 122 parking spaces at 1:00 p.m.; and 2) a second peak in the early evening with a total demand of 141 parking spaces at 6:00 p.m. Therefore, the project provides a surplus of one parking space based on Code requirements and nine spaces based on the shared parking analysis.
- F. *The adequacy and efficiency of landscaping and open space areas and the use of water efficient plant and irrigation materials.*

Facts in Support of Finding:

- F-1. The project includes the enhanced use of landscaping, including a variation of ornamental groundcover, vines, shrubs, and trees, to help soften and buffer the massing of the parking structure and commercial building from the surrounding areas and roadways.
- F-2. A new water feature design would encompass the southeast corner of the project site.
- F-3. The landscape plan includes the requirements of the Mariner's Mile Strategic Vision and Design Framework, but also incorporates non-invasive and water conserving plant types.
- F-4. The project is subject to the City's Water Efficient Landscape Ordinance (Chapter 14.17 of NBMC).

Finding:

- G. *The protection of significant views from public right(s)-of-way and compliance with Section 20.30.100 (Public View Protection).*

Facts in Support of Finding:

- G-1. The portion of West Coast Highway, on which the project is located, is not a designated coastal view road and is not considered a public view corridor requiring public view protection.

Finding:

- H. *Not detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed development.*

Facts in Support of Finding:

- H-1. The project has been conditioned to ensure that potential conflicts with surrounding land uses are minimized to the extent possible to maintain a healthy environment for both businesses and residents.
- H-2. The project's refuse area is located within the first level of the parking garage and will not result in odor impacts to residents above or noise associated with refuse collection.
- H-3. To minimize or eliminate odors associated with the restaurant uses impacting the residents above the site, the project has been conditioned to require the installation of Pollution Control Units with odor eliminators that take the exhaust from the hoods in the kitchens and filter it for particulates and odor.
- H-4. Any illumination of the proposed tower and cupola feature has been conditioned to consist of soft accent lighting so as not to become a visual disturbance to the views of the adjacent residents.
- H-5. The project is subject to the City's Outdoor Lighting requirements contained with Section 20.30.070 of the Zoning Code.
- H-6. The proposed 750-square-foot outdoor dining area located within the public-right-of-away adjacent to Dover will be screened from view of the residents above the hillside and is not anticipated to result in a significant noise disturbance; however, until the specific operation of the restaurants are better known, the project has been conditioned prohibiting this outdoor patio and deferring review until the of the use permit applications for the future restaurant uses are submitted.

6. The project site is located in the Nonresidential, Shoreline Height Limit Area where the height of structures are limited to 26 feet for flat roofs/parapet walls and to 31 feet for sloped roofs with a minimum 3:12 pitch. The height of a structure can be increased up to a maximum of 35 feet for flat roofs/parapet walls and up to 40 feet for sloped roofs, subject to the approval of a Site Development Review. In accordance with Section 20.30.060.C.3 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The project applicant is providing additional project amenities beyond those that are otherwise required.*

Facts in Support of Finding:

- A-1. The most significant amenity the project provides is the long desired redevelopment of this highly visible property that serves as a gateway into the Mariner's Mile corridor. This property is constrained due to its shallow depths and as such has proven difficult to redevelop and as fallen into disrepair. The proposed building exhibits a high level of architectural detail and includes design features that enhance the aesthetics of the building and the area. The most prominent design feature of the building is the octagonal tower and cupola at the southeasterly corner of the site intended to serve as a landmark feature and an anchor into the Mariner's Mile corridor area of the City. The proposed parking structure has been designed to incorporate a variety of materials and features (i.e. stone treatment and hanging vines) and includes vertical recessed openings and a storefront with a vertical tower element to break up the massing and monotony commonly associated with parking structures.
- A-2. The project includes enhanced landscaping of the public right-of-way along the West Coast Highway and Dover Drive. In addition to the continuous hedge and palm trees requirement of the Mariner's Mile Strategic Vision and Design Framework, the landscaping plan incorporates additional ornamental groundcover, vines, shrubs, and trees, to help soften and buffer the massing of the parking structure and commercial building and enhance the streetscape of Mariner's Mile. To further improve the streetscape and improve the entrance into the corridor, the applicant is proposing the installation of 280-square-foot water feature that would encompass the southeast corner of the project site. Water effects are proposed to include a knife-edge water weir falling towards the street at the center, boarded by low walls at each end of the feature. The water feature will also include plant material and a combination of eroded, colored concrete and natural stone.
- A-3. The design and height of the building benefits the residential properties above and to the north by providing noise attenuation from the roadway noise generated from vehicles on West Coast Highway and Dover Drive. As

illustrated in Figure 14 of the MND, a net decrease in roadway noise of up to 9 dBA CNEL is expected as a result of the noise attenuation effect of the new structures.

- A-4. At minimum, City policy requires the applicant to underground their utilities from the nearest power pole, allowing the power poles to remain in place. In this case, the applicant is proposing to completely remove the power poles and underground the power lines around the eastern, southern, and western perimeter of the project site.
- A-5. Another amenity includes the elimination of the existing driveway access off Dover Drive and the consolidation of the existing four driveways along West Coast Highway into two main access driveways. Therefore, the project minimizes the number of driveways along West Coast Highway, ensuring that the desired traffic flow along this major road is maintained and ensuring that the continuity of the street-facing building elevations would not be interrupted. The extension of the lane drop on West Coast Highway also serves to enhance the safety of the highway by extending the length of the merge lane, which providing safe access from the site

Finding:

- B. *The architectural design of the project provides visual interest through the use of light and shadow, recessed planes, vertical elements, and varied roof planes.*

Facts in Support of Finding:

- B-1. The goal of the architectural design is to simulate the appearance of a small Mediterranean village of two-story commercial buildings, resulting in modulated building masses and rooflines. The project consists mainly of flat roofs with heights between 29 feet 4 inches and 32 feet 4 inches. Several vertical elements have been included in the design such as the tower features and elevator/stairwell enclosures which range in height from 35 feet to 40 feet. The main elevator and stairwell enclosure has been integrated into the building façade as a prominent architectural feature and creates a transition between the commercial and parking structure components of the project. To break up the bulk and massing of the parking structure as viewed from West Coast Highway, a 1194-square-foot commercial space has been located on the first level of the structure, below the ramp, providing a storefront and retail presence in front the of the structure. A tower element extends this storefront vertically along the face of the structure.
- B-2. The storefronts on both the upper and lower level will be setback from the edge of the balcony along the street elevation, creating light and shadow effects. Light and shadow will also be created through the extensive use of awnings and recessed openings. The massing of the parking structure is also minimized through the use of vertical opening openings along the street frontage.

Finding:

- C. *The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed structure(s) and existing adjacent developments or public spaces. Where appropriate, the proposed structure(s) provide a gradual transition to taller or shorter structures on abutting properties.*

Facts in Support of Finding:

- C-1. The tower and cupola feature, the tallest portion of the building, is located at the southeasterly corner of the site, away from the nearest residential and commercial uses. The height of the project transitions in height from east to west, minimizing the change in scale to the adjacent commercial properties to the west. With the exception of the tower elements and mechanical equipment enclosure, the height of the commercial building is 32 feet 4 inches. To minimize the visual height and bulk of the parking structure as viewed in perspective from West Coast Highway, the partial parking structure roof cover has been setback 37 feet 5 inches from the front edge of the structure. With the exception of the two 37-foot-high tower features, the resulting height of the parking structure along the front façade is 29 feet, 4 inches providing a transition to the commercial properties to the west as viewed from the highway. Although the adjacent commercial property is currently with one-story commercial buildings, the site has the potential to be redeveloped at heights of 31 feet without discretionary approvals.
- C-2. The homes on the residential lots to the north are situated at the top of the hillside that ranges in height from 40-50 feet above the project's pad elevation. The homes are also located a minimum of 60 feet back from the rear property line. These vertical and horizontal separations between the proposed commercial building and the homes at the top of the slope minimize the impact of the proposed structure heights to the adjacent residences.

Finding:

- D. *The structure will have no more floor area than could have been achieved without the approval of the height increase.*

Facts in Support of Finding:

- D-1. The requested increase in floor area does not drive the need for the increased height. The need for the third level of the parking structure is primarily driven by the need to provide parking for the two restaurants that will serve of anchor tenants to the development.

- D-2. Even if the project is designed with only the two restaurants at the currently permitted 0.5 FAR, the third level of parking would be needed to accommodate the 105 parking spaces parking anticipated for the restaurant uses. The height of the parking structure could be reduced from 35 feet to 29 feet 4 inches if the roof cover was removed; however, the roof cover provides a benefit to the residents located above the hillside as it shields parking structure lighting and glare, and buffers vehicle noise.
- D-3. With regard to the height of the commercial building, the need for height is driven by the need to provide desirable 12-foot-high ceilings for the retail tenants ensuring that these commercial building will remain marketable to tenants. In order to provide 12-foot-high clear ceilings and accommodate space for mechanical systems and fire sprinklers, a total plate height between 14 feet 6 inches and 17 feet 6 inches is necessary. Plate heights within the project utilize a 14-foot-8-inch dimension. It's also important to note that a majority of the structure will maintain a maximum height of 29 feet 4 inches, with the exception for the tower elements, designed to enhance the architecture of the building, and elevator/stairwell enclosures and mechanical equipment enclosure.
7. Pursuant to Sections 20.40.070.B.3 and 20.40.110.B.2 of the Zoning Code, a conditional use permit is required to allow for the construction of a parking structure adjacent to a residential zoning district and to establish a parking management plan. In accordance with Section 20.52.020.F of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

- A-1. The commercial building and related uses are consistent with CG General Plan land use designation. The parking structure is considered an accessory use that supports of the commercial uses. Parking structures and the use of valet are commonly associated with restaurant development and compatible with the other commercial uses located in Mariner's Mile.

Finding:

- B. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

- B-1. The commercial building and related uses are consistent with CG zoning district. The parking structure is considered an accessory use that supports of the commercial uses. Parking structures located adjacent to residential districts

requires review and approval of a conditional use permit to minimize impacts to the residential uses.

Finding:

- C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

- C-1. The parking structure is proposed to be located at the base of the hillside adjacent to a residential district, where the neighboring residential properties are located along the top of the hillside approximately 40-50 feet above the project's pad elevation. The height of the covered portion of the parking structure is 35 feet at the rear of the property directly adjacent to the residential district. The residential dwellings will remain approximately 22 feet higher in elevation than the surface of the third level parking deck (25 feet, 10 inches) and 12 feet, 6 inches higher in elevation than the top of the parking structure roof. The closest residential dwelling is located approximately 60 feet from the rear property line. These vertical and horizontal separations between the proposed commercial building and the homes provide adequate distance so that the mass and bulk of the parking structure should not negatively impact residents. The rear two-thirds of the parking structure would be enclosed and will screen the view of the parked vehicles and parking structure lighting from the residents located above the hillside. The parking structure roof will also provide an additional sound buffer to the residents above

Finding:

- D. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

- D-1. The project results in a total peak parking demand of 149 spaces, which can now be entirely provided on site within the 150-space parking structure without any adjustments in parking requirements. The applicant's Parking Operational Plan should ensure that employees and patrons are able to park on site.
- D-2. The Parking Operational Plan has been reviewed and approved by the City's Traffic Engineer. Also the Traffic Engineer and Fire Department have reviewed the parking lot design and have determined that the parking lot design will function safely and will not prevent emergency vehicle access to the establishment. Given the design constraints with providing parking in compliance with City standards on such a shallow lot, the proposed parking management plan is a reasonable solution.

Finding:

- E. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

- E-1. Parking structures have the potential to generate noise, such as car-alarms, car horns, car audio systems, people talking, vehicle pass-bys, and engine idling, which have the potential to disturb the adjacent residences. These individual noise sources last for short durations and their occurrences are infrequent; however, they can annoy neighbors. A noise analysis was prepared by The Planning Center as part of the MND to analyze the potential noise impacts associated with the previously proposed uncovered parking structure to the adjacent residents using sound modeling. The analysis concludes that the noise generated from vehicles and service trucks within the first and second level of the structure will be attenuated given that those levels are enclosed. With regard the uncovered third level, the analysis indicates that during the daytime, traffic noise from West Coast Highway and Dover Drive would be audible over the noise generated from the third level. In the evening, noise generated from the third level would be less than the City's 45 dBL Leq exterior noise standard at the residences. In addition, the third level of the parking structure will be reserved for employee and valet parking only, avoiding potential noise disturbances that may be associated with patrons loitering in the parking area after hours. Although noise from the third level of the parking structure is not anticipated to violate the Community Noise Ordinance standards, the applicant has since proposed to partially enclose and cover the rear two-thirds of the parking structure. This roof will have the effect of further attenuating noise generated from vehicles on the third level of the parking structure.
- E-2. The rear two-thirds of the upper parking level will be covered and will shield illumination of the parking structure from view of the resident's above. To illuminate the uncovered portion of the parking structure, light fixtures would be recessed into the southerly and westerly walls with very low light output and shields to eliminate glare from views above. In addition, the project has been conditioned to require a nighttime light inspection to confirm there are no light and glare impacts.
- E-3. The project has been conditioned to require a nighttime light inspection to confirm there are no light and glare impacts.

8. The proposed project encroaches five feet into the rear five-foot-setback adjacent to the residential lots to the north. In accordance with Section 20.52.090 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Support of Finding:

- A-1. The subject property is wide (approx. 340 feet) and shallow (approx. 90 feet avg.). Although many of the lots along the inland side of the Mariner's Mile corridor consist of shallow lots, this property in particular is especially shallow given the acquisition of the property frontage in 1979 to accommodate the Bay Bridge realignment project. The realignment reduced the property depth approximately 27 feet on the westerly end and 47 feet on the easterly end of the property.
- A-2. The subject property is approximately 25 feet shallower than the adjacent properties to the west. The 60 lots on the inland side of West Coast Highway and located between the intersection of Dover Drive and the westerly boundary the Balboa Bay Club are the shallowest commercial lots within Marine's Mile corridor area. Of these 60 lots, only four lots have lot depths less than 100 feet (96.47 at its shallowest end). Over half of these lots consist of lot depths greater than 140 feet. The average lot depth of these 60 lots is approx. 120 feet.

Finding:

- B. *Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Facts in Support of Finding:

- B-1. The reduced lot depths do not accommodate an optimal commercial center site configuration. To design an optimal commercial building, the commercial square footage has been consolidated on the eastern portion of the site as a two-level design in order to accommodate the required on-site parking on the western portion of the site where the lot depth is greater.
- B-2. Due to the shallow lot depths, strict compliance with the rear 5-foot setback would result in a parking structure design that would be substandard to the minimum parking aisle and parking stall requirements resulting in a potentially

hazardous and difficult to access parking structure. Alternatively, the elimination of 49 spaces would be required to accommodate a parking structure that conforms both to setbacks and parking standards, depriving the property owner of the privilege of constructing a parking structure that could be constructed on the other 54 neighboring lots that have deeper lot dimensions.

Finding:

- C. *Granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Support of Finding:

- C-1. The reduced lot depths do not accommodate an optimal commercial center site configuration and in order to maintain a substantial property right of developing the site for commercial use, the elimination of the rear yard setback is required to allow for the development of a parking structure that complies with City standards for vehicular access and parking. The parking structure has been located on the western portion of the site where the lots depths are greater and the commercial building has been located on the eastern half of the site where is the lot depth is narrowest (approx. 85 feet). Without the granting of the variance, the development of a commercial retail building with adequate on-site parking would not be feasible on this wide and shallow site.

Finding:

- D. *Granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*

Facts in Support of Finding:

- D-1. Granting of the variance would not constitute a special privilege inconsistent with the limitations upon other properties in the Mariner's Mile corridor as it allows the applicant the ability to develop an optimal commercial center with adequate parking on site as could be developed on adjacent lots with greater lots depths.

Finding:

- E. *Granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*

Facts in Support of Finding:

- E-1. Four residential lots abut the project's rear property line; however, these residential properties are located up the hillside approximately 40-50 feet above the project's pad elevation. In addition, the closest residential dwelling is located approximately 60 feet from the rear property line. These vertical and horizontal separations between the proposed commercial building and the homes provide adequate buffer equivalent to or superior to a five-foot rear setback.
- E-2. The five-foot encroachment will not result in a condition where the commercial development will endanger or create a hazard to those persons residing in the dwellings above. In addition, the hillside is heavily landscaped and the applicant has agreed to work with adjacent residential property owners to further landscape the slope to provide increased landscaped screening of the rear of the project.
- E-3. The development includes cutting into the toe of the slope; however, the preliminary geotechnical report indicates that the design and construction of the retaining wall is feasible, subject to the recommendations within the report and in compliance with Building and Grading Codes, and will not undermine the stability of the hillside.

Finding:

- F. *Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan).*

Facts in Support of Finding:

- F-1. Typically commercially zoned properties are not required to maintain rear setbacks, except when located adjacent to residentially zoned properties. The intent is to provide separation for light, air, and open space adjacent to these residential properties. In this case, four residential lots abut the project's rear property line; however, the houses are located on the hillside approximately 40-50 feet above the project's pad elevation. The closest residential dwelling is located approximately 60 feet from the rear property line. These vertical and horizontal separations between the proposed commercial building and the homes provide adequate buffer equivalent to or superior to a five-foot rear setback. Therefore, the five-foot encroachment will not deprive the adjacent residential properties from the adequate enjoyment of light, air, and open space.
9. The property consists of six legal lots, which the applicant is proposing to consolidate into one unified site. The merger of five or more lots requires the approval of a parcel map. In accordance with Section 19.12.060 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding:

- A-1. The project is consistent with the CG General Plan designation of the site.
- A-2. The Public Works Department has reviewed the proposed tentative map and believes it is consistent with the Newport Beach Subdivision Code (Title 19) and applicable requirements of the Subdivision Map Act.
- A-3. The proposed project accommodates the potential future widening of Coast Highway and all utility lines will be undergrounded.
- A-4. Conditions of approval have been included to ensure compliance with Title 19.

Finding:

- B. *That the site is physically suitable for the type and density of development.*

Facts in Support of Finding:

- B-1. The existing site is entirely developed and does not support any environmental resources.
- B-2. Portions of the development require cuts into the slope on the northern portion of the site. The geologic investigation revealed that the portions of this slope which are not improved by the proposed development may be surficially unstable; however, mitigation measures have been incorporated, as recommended by the site-specific geotechnical investigation that will reduce impacts to a less than significant level.
- B-3. The subject site is located at the intersection of West Coast Highway and Dover Drive and serves as the gateway into the Mariner's Mile commercial corridor of the City. Given its location, this site is ideal for the development of a commercial building.
- B-4. The subject parcel map allows for the consolidation of six shallow lots into one unified site large enough to accommodate a viable commercial development.

Finding:

- C. *That the design of the subdivision or the proposed improvements will not cause substantial environmental damage nor substantially and avoidably injure fish or*

wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Facts in Support of Finding:

- C-1. A Mitigated Negative Declaration has been prepared and concludes that no significant environmental impacts will result with proposed development of the site in accordance with the proposed subdivision map.

Finding:

- D. *That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding:

- D-1. The proposed Parcel Map is for the consolidations of six existing commercial lot into one commercial development site. All construction for the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 of the Municipal Code and Section 66411 of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.
- D-2. All mitigation measures will be implemented as outlined in the Mitigated Negative Declaration to ensure the protection of the public health.
- D-3. No evidence is known to exist that would indicate that the planned subdivision pattern will generate any serious public health problems.

Finding:

- E. *That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to easements previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding:

- E-1. The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development as there are no public easements that are located on the property.
- E-2. An easement through the site will be retained by the City to sewer and utilities purposes.
- E-3. No other public easements for access through or use of the property have been retained for use by the public at large.

Finding:

- F. *That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding:

- F-1. The property is not subject to the Williamson Act since the subject property is not considered an agricultural preserve and is less than 100 acres.

Finding:

- G. *That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

- G-1. The property is not a "land project" as defined in Section 11000.5 of the California Business and Professions Code.
- G-2. The project is not located within a specific plan area.

Finding:

- H. *That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Facts in Support of Finding:

- G-1. The proposed Parcel Map and improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Department enforces Title 24 compliance through the plan check and inspection process.

Finding:

- I. *That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Facts in Support of Finding:

- I-1. The proposed Parcel Map is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need. The project does not involve the elimination of residential units and therefore will not affect the City's ability to meet its share of housing needs.
- I-2. Public services are available to serve the proposed development of the site and the Mitigated Negative Declaration prepared for the project indicates that the project's potential environmental impacts are expected to be less than significant.

Finding:

- J. *That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Facts in Support of Finding:

- J-1. Waste discharge into the existing sewer system will be consistent with the existing commercial use of the property and does not violate Regional Water Quality Control Board (RWQCB) requirements.

- J-2. Sewer connections have been conditioned to be installed per City Standards, the applicable provisions of Chapter 14.24 (Sewer Connection, Permits), and the latest revision of the Uniform Plumbing Code.

Finding:

- K. *For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Facts in Support of Finding:

- K-1. The subject property is not located in the Coastal Zone.
- K-2. The subject property does not have access to any beaches, shoreline, coastal waters, tidelands, coastal parks or trails.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council of the City of Newport Beach does hereby find, on the basis of the whole record, that there is no substantial evidence that the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the City Council's independent judgment and analysis. The City Council adopts Mitigated Negative Declaration, including the Mitigation Monitoring and Reporting Program attached as Exhibit "A". The document and all material, which constitute the record upon which this decision was based, are on file with the Planning Department, City Hall, 3300 Newport Boulevard, Newport Beach, California.
2. The City Council of the City of Newport Beach does hereby approve General Plan Amendment No. GP2010-009. Table LU2 and Figure LU9 of the Land Use Element of the General Plan shall be amended as provided in Exhibit "B".
3. The City Council determines that the Project complies with the Traffic Phasing Ordinance, based on the weight of the evidence in the administrative record, including Traffic Study No. TS2011-001.
4. The City Council of the City of Newport Beach does hereby approve Site Development Review No. SR2010-001, Conditional Use Permit No. 2010-024, Variance No. 2010-004, and Parcel Map No. 2010-008, subject to the conditions set forth in Exhibit C.
5. This resolution shall take effect immediately upon adoption.

6. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
7. This resolution was approved, passed and adopted at a regular meeting of the City Council of the City of Newport Beach, held on the 9th day of August, 2011.



MAYOR

ATTEST:



CITY CLERK



EXHIBIT "A"

**MARINER'S POINTE PROJECT
MITIGATION MONITORING PROGRAM (SCH# 2011041038)
CITY OF NEWPORT BEACH**

<i>Mitigation Measure</i>	<i>Phase of Implementation</i>	<i>Responsible Monitoring Party</i>	<i>Completion Date/Initials</i>
Biological Resources			
<p>1. The construction contractor shall comply with the Migratory Bird Treaty Act of 1918. The construction contractor shall do one of the following:</p> <ul style="list-style-type: none"> Avoid grading activities during the nesting season, February 14 to September 1; or If grading activities are to be undertaken during the nesting season, a site survey for nesting birds shall be conducted by a qualified biologist prior to no more than three days prior to commencement of grading activities. If nesting birds are found in trees to be removed, removal shall be postponed until the fledglings have vacated the nest or the biologist has determined that the nest has failed. Furthermore, the biologist shall establish an appropriate buffer zone where construction activity may not occur until the fledglings have vacated the nest or the biologist has determined that the nest has failed. If nesting birds are detected in trees being preserved, the biologist shall establish an appropriate buffer zone where construction activity may not occur until the fledglings have vacated the nest or the biologist has determined that the nest has failed. 	During construction	City of Newport Beach Community Development Department	
Cultural Resources			
<p>2. The project applicant shall have a qualified archaeologist conduct a Phase II archaeological investigation and a Phase III investigation if warranted by the Phase II study. The Phase II investigation, including trenching and analysis of any resources found, shall be completed before issuance of a grading permit by the City of Newport Beach. A Phase II archaeological testing program consists of a control subsurface investigation designed to extract a small sample of the subsurface deposits, but a sample large enough to draw a conclusion on the significance of the site (assuming the site is present). If intact features of an archaeological site, such as hearths, living surfaces, or middens, are discovered in the course of the Phase II investigation, then the project applicant shall have the archaeologist:</p> <ul style="list-style-type: none"> Conduct a feasibility investigation to preserve in place, any significant archaeological resource that is discovered. Feasibility can be based on but not limited to whether the significant archaeological 	Prior to issuance of grading permit	City of Newport Beach Community Development Department	

Mitigation Measure	Phase of Implementation	Responsible Monitoring Party	Completion Date/Initials
<p>resource is beneath open space that can incorporate preservation in place. If preservation in place is feasible, such preservation shall be documented with the City's Planning Division, and no further mitigation is necessary;</p> <ul style="list-style-type: none"> If preservation in place is not feasible, the applicant's archaeologist shall conduct a Phase III investigation prior to the issuance of a grading permit. A Phase III consists of extracting a larger sample of the site materials to document the function, age, and components of the site, allowing for interpretation and comparative analysis with respect to the larger area (e.g., occupation within the Newport Bay area). The City's Planning Division shall approve the report and related actions prior to grading permit issuance. 			
<p>3. The Project Applicant shall have a qualified professional archaeologist onsite to monitor for any potential impacts to archaeological or historic resources throughout the duration of any ground disturbing activities. The professional archaeologist shall have the authority to halt any activities adversely impacting potentially significant cultural resources until the resources can be formally evaluated. The archaeologist must have knowledge of both prehistoric and historical archaeology. Additionally, the archaeological monitoring program shall include the presence of a local Native American representative (Gabrielino and/or Juaneno). Resources must be recovered, analyzed in accordance with CEQA guidelines, and curated. Suspension of ground disturbance in the vicinity of the discoveries shall not be lifted until the archaeologist has evaluated discoveries to assess whether they are classified as historical resources or unique archaeological sites, pursuant to CEQA.</p>	During construction	City of Newport Beach Community Development Department	
<p>4. The Project Applicant shall retain a qualified professional paleontologist to monitor for any potential impacts to paleontological resources throughout the duration of ground disturbing activities. In the event paleontological resources are uncovered, the professional paleontologist shall have the authority to halt any activities adversely impacting potentially significant fossil resources until the resources can be formally evaluated. If potentially significant fossils are uncovered they must be recovered, analyzed in accordance with CEQA guidelines, and curated at facilities at the Natural History Museum of Los Angeles County, or other scientific institution accredited for curation and collection of fossil specimens. Suspension of ground disturbances in the vicinity of the discoveries</p>	During construction	City of Newport Beach Community Development Department	

Mitigation Measure	Phase of Implementation	Responsible Monitoring Party	Completion Date/Initials
shall not be lifted until the paleontologist has evaluated the significance of the resources pursuant to CEQA.			

Geology and Soils

5. Prior to issuance of grading permits, a detailed engineering-level geotechnical investigation report shall be prepared and submitted with engineered grading plans to further evaluate expansive soils, soil corrosivity, slope stability, landslide potential, settlement, foundations, grading constraints, and other soil engineering design conditions and to provide site-specific recommendations to address these conditions, if determined necessary. The engineering-level report shall include and address each of the recommendations included in the geotechnical reports prepared by MACTEC (2010a and 2010b) and included as Appendix E. The geotechnical reports shall be prepared and signed/stamped by a Registered Civil Engineer specializing in geotechnical engineering and a Certified Engineering Geologist. Geotechnical rough grading plan review reports shall be prepared in accordance with the City of Newport Beach Grading Ordinance.	Prior to issuance of grading permit	City of Newport Beach Community Development Department	
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Noise

6. The contractor shall properly maintain and tune all construction equipment in accordance with the manufacturer's recommendations to minimize noise emissions.	During construction	City of Newport Beach Community Development Department	
7. Prior to use of any construction equipment, the contractor shall ensure that all equipment is fitted with properly operating mufflers, air intake silencers, and engine shrouds no less effective than as originally equipped by the manufacturer.	During construction	City of Newport Beach Community Development Department	
8. The construction contractor shall locate stationary noise sources (e.g., generators, compressors, staging areas) and material delivery (loading/unloading) areas as far from residences as possible (e.g., eastern portion of the project site).	During construction	City of Newport Beach Community Development Department	
9. The construction contractor shall post a sign, clearly visible onsite, with a contact name and telephone number of construction contractor to respond in the event of a noise complaint.	During construction	City of Newport Beach Community Development Department	

Transportation and Traffic

10. Prior to issuance of a grading permit, the project will be required to develop a Construction Traffic Management Plan that includes the following elements: <ul style="list-style-type: none"> Restrict construction worker and equipment delivery trips to occur outside of the weekday AM and PM peak hours. Identify and establish truck haul routes and restrict haul operations to occur outside of the weekday AM and PM peak hours. 	Prior to issuance of grading permit	City of Newport Beach Public Works Department	
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<i>Mitigation Measure</i>	<i>Phase of Implementation</i>	<i>Responsible Monitoring Party</i>	<i>Completion Date/Initials</i>
<ul style="list-style-type: none"> Provide Traffic Control Plans for detours and temporary road closures (if necessary) that meet the minimum Caltrans, City, and County criteria. 			
<p>11. The applicant shall contact OCTA and coordinate operation of the Coast-Dover bus stop along the project's West Coast Highway frontage during project construction. Mitigation as required to suspend operation, or modify or temporarily relocate the bus stop during project construction activities shall be negotiated with OCTA. The applicant shall provide the plans/mitigation to the City as negotiated with OCTA for review and approval by the City of Newport Beach's Planning Division and Public Works Department prior to issuance of grading permits. The applicant shall provide OCTA with a minimum 14-day advance notice prior to the start of construction activities by contacting either the Detour Coordinator or Field Operations.</p>	Prior to issuance of grading permit	City of Newport Beach Community Development and Public Works Department	

EXHIBIT "B"

4

Table LU2 Anomaly Locations

<i>Anomaly Number</i>	<i>Statistical Area</i>	<i>Land Use Designation</i>	<i>Development Limit (sf)</i>	<i>Development Limit (Other)</i>	<i>Additional Information</i>
1	L4	MU-H2	460,095	471 Hotel Rooms (not included in total square footage)	
2	L4	MU-H2	1,052,880		
2.1	L4	MU-H2	18,810		11,544 sf restricted to general office use only (included in total square footage)
3	L4	CO-G	734,641		
4	L4	MU-H2	250,176		
5	L4	MU-H2	32,500		
6	L4	MU-H2	46,044		
7	L4	MU-H2	81,372		
8	L4	MU-H2	442,775		
9	L4	CG	120,000	164 Hotel Rooms (included in total square footage)	
10	L4	MU-H2	31,362	349 Hotel Rooms (not included in total square footage)	
11	L4	CG	11,950		
12	L4	MU-H2	457,880		
13	L4	CO-G	288,264		
14	L4	CO-G/MU-H2	860,884		
15	L4	MU-H2	228,214		
16	L4	CO-G	344,231		
17	L4	MU-H2	33,292	304 Hotel Rooms (not included in total square footage)	
18	L4	CG	225,280		
19	L4	CG	228,530		
21	J6	CO-G	687,000		Office: 660,000 sf; Retail: 27,000 sf
		CV		300 Hotel Rooms	
22	J6	CO-G	70,000		Restaurant: 8000 sf, or Office: 70,000 sf
23	K2	PR	15,000		
24	L3	IG	89,624		
25	L3	PI	84,585		
26	L3	IG	33,940		
27	L3	IG	86,000		
28	L3	IG	110,600		
29	L3	CG	47,500		
30	M6	CG	54,000		
31	L2	PR	75,000		
32	L2	PI	34,000		

Table LU2 Anomaly Locations

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
33	M3	PI	163,680		Administrative Office and Support Facilities: 30,000 sf Community Mausoleum and Garden Crypts: 121,680 sf Family Mausoleums: 12,000 sf
34	L1	CO-R	484,348		
35	L1	CO-R	199,095		
36	L1	CO-R	227,797		
37	L1	CO-R	131,201	2,050 Theater Seats (not included in total square footage)	
38	L1	CO-M	443,627		
39	L1	MU-H3	408,084		
40	L1	MU-H3	1,426,634	425 Hotel Rooms (included in total Square Footage)	
41	L1	CO-R	327,671		
42	L1	CO-R	286,166		
43	L1	CV		611 Hotel Rooms	
44	L1	CR	1,619,525	1,700 Theater Seats (not included in total square footage)	
45	L1	CO-G	162,364		
46	L1	MU-H3/PR	3,725	24 Tennis Courts	Residential permitted in accordance with MU-H3.
47	L1	CG	105,000		
48	L1	MU-H3	337,261		
49	L1	PI	45,208		
50	L1	CG	25,000		
51	K1	PR	20,000		
52	K1	CV		479 Hotel Rooms	
53	K1	PR	567,500		See Settlement Agreement
54	J1	CM	2,000		
55	H3	PI	119,440		
56	A3	PI	1,343,238	990,349 sf Upper Campus 577,889 sf Lower Campus	In no event shall the total combined gross floor area of both campuses exceed the development limit of 1,343,238 sq. ft.
57	Intentionally Blank				
58	J5	PR	20,000		
59	H4	MU-W1	247,402	144 Dwelling Units (included in total square footage)	
60	N	CV	2,660,000	2,150 Hotel Rooms (included in total square footage)	
61	N	CV	125,000		
62	L2	CG	2,300		

Table LU2 Anomaly Locations

Anomaly Number	Statistical Area	Land Use Designation	Development Limit (sf)	Development Limit (Other)	Additional Information
63	G1	CN	66,000		
64	M3	CN	74,000		
65	M5	CN	80,000		
66	J2	CN	138,500		
67	D2	PI	20,000		
68	L3	PI	71,150		
69	K2	CN	75,000		
70	D2	RM-D			Parking Structure for Bay Island (No Residential Units)
71	L1	CO-G	11,630		
72	L1	CO-G	8,000		
73	A3	CO-M	350,000		
74	L1	PR	35,000		
75	L1	PF			City Hall, and the administrative offices of the City of Newport Beach, and related parking, pursuant to Section 425 of the City Charter.
76	H1	CO-G		0.5 FAR	1.0 FAR permitted, provided all four legal lots are consolidated into one parcel to provide unified site design
77	H4	CV	240,000	157 Hotel Rooms (included in total square footage)	
78	B5	CM	139,840		
79	H4	CG		03./0.5 FAR	Development limit of 19,905 sq. ft. permitted, provided all six legal lots are consolidated into one parcel to provide unified site design

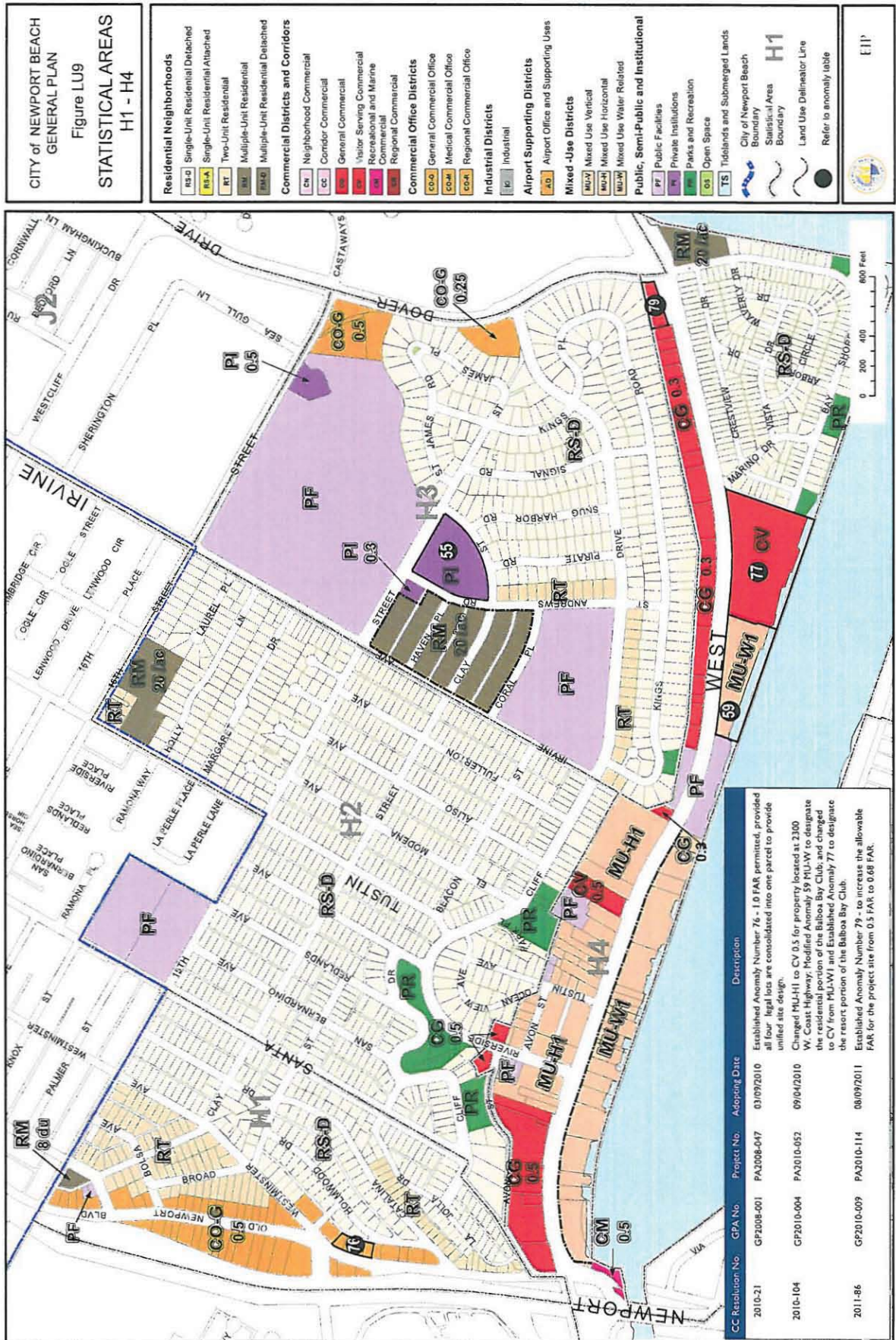


EXHIBIT "C"**CONDITIONS OF APPROVAL**
*(Project-specific conditions are in italics)***PLANNING**

1. *The development shall be in substantial conformance with the approved site plan, floor plans, roof plans, conceptual building elevations, and conceptual landscape plans stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)*
2. *Site Development Review No. SR2010-001, Conditional Use Permit No. UP2010-024, and Variance No. 2010-004 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
3. *The outdoor patio and block wall proposed to encroach into the Dover Drive public right-of-way shall be eliminated, unless this conditional use permit is amended or a new conditional use permit is approved in conjunction with an eating and drinking establishment that specifically approves the construction of the outdoor patio and an encroachment or lease agreement is approved by the Public Work's Department.*
4. *Prior to the issuance of building permits, the final building elevations and roof plan of the final architectural plans for the commercial building and parking structure shall be reviewed and approved by the Planning Commission to ensure that the high level of architectural detail and treatments illustrated on the approved conceptual plans is implemented and incorporated into the final construction drawings for building permit issuance. The specific colors and materials (including roof colors and materials), window and door specifications, lighting specifications, and any other information deemed relevant by the Community Development Director shall be submitted to the Planning Commission for review and approval. Any substantial changes to the approved final architectural plans shall require approval by the Planning Commission.*
5. *Flat roof portions of the building shall be constructed to meet "cool roofs" standards for energy efficiency; however, the color and material shall not result in glare as viewed from the residents above. No mechanical equipment shall be permitted on the roof, except within the designated mechanical well and shall not be visible from West Coast Highway or the adjacent residential properties.*
6. *Uses shall be permitted, or conditionally permitted, within the project consistent with the provisions of the Zoning Code, so long as they do not increase the approved traffic generation for the project (TS2011-001).*

7. *Required parking for this project has been determined based on documentation and a number of assumptions, including: 1) the shared parking analysis prepared by LSA Associates, Inc., dated July 22, 2011; 2) a limitation that the maximum Net Public Area (NPA) of eating and drinking uses be limited to 5,210 square feet; and 3) the proposed floor area for eating and drinking uses will be occupied by fine dining establishments with very low turnover with a parking demand of 1 space per 50 square feet of NPA. Any changes to the assumed tenant mix or changes in the type of food use that would increase parking demands may require the preparation of a new shared parking analysis to ensure that adequate parking can be provided on site, and shall be subject to the review and approval of the Community Development Department.*
8. *A total of 150 parking spaces shall be provided on site as illustrated on the approved plans and parking management plan for the project.*
9. *The upper level of the parking structure shall only be used for employee or valet parking, unless an amendment to this Conditional Use Permit and new parking management plan is prepared and approved.*
10. *Any minor changes to the parking management plan shall be reviewed and approved by the Community Development Director and City Traffic Engineer prior to implementation. Significant changes may require an amendment to this Conditional Use Permit.*
11. *Should the applicant propose to alter the location and/or number of vehicular access points, or propose to take vehicular access across the adjacent property located at 320 West Coast Highway, such proposal shall be subject to review and approval by the Community Development Director and the City Traffic Engineer.*
12. *Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.*
13. *The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.*
14. *The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for modification or revocation of Site Development Review No. SR2010-001, Conditional Use Permit No. UP2010-024, and Variance No. 2010-004.*
15. *This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.*
16. *This Conditional Use Permit, Site Development Review, and Variance may be modified or revoked by the City Council or Planning Commission should they determine that the proposed development, uses, and/ or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or*

improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

17. *Hours of operations for the uses within the project shall be limited to between 6:00 a.m. and 11:00 p.m. daily, unless otherwise permitted to maintain different hours of operation pursuant to a subsequent Conditional Use Permit.*
18. *All employees are required to park on site, unless otherwise approved by the Community Development Director, and may require an amendment to this Site Development Review and Conditional Use Permit.*
19. *Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, shall require an amendment to Site Development Review No. SR2010-001, Conditional Use Permit No. UP2010-024, and/or Variance No. 2010-004 or the processing of new permits.*
20. *Prior to the issuance of building permits, the final landscape and irrigation plan, prepared by a licensed landscape architect, shall be reviewed and approved by the Planning Commission to ensure that the landscaping improvements illustrated on the approved conceptual plan are implemented and incorporated into the final construction drawings for building permit issuance. These plans shall include specifications and details for all hardscape, water features, plant materials, planting sizes (including heights, box size, trunk diameters, etc), and growth characteristics. Any substantial changes to the approved final landscape plan shall require approval by the Planning Commission.*
21. *All landscape materials and landscaped areas shall be installed and maintained in accordance with the final landscape plan approved by the Planning Commission per Condition No. 20, including the proposed water feature. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be reviewed by the Municipal Operations Department. All planting areas shall be provided with a permanent underground automatic sprinkler irrigation system of a design suitable for the type and arrangement of the plant materials selected. The irrigation system shall be adjustable based upon either a signal from a satellite or an on-site moisture-sensor. Planting areas adjacent to vehicular activity shall be protected by a continuous concrete curb or similar permanent barrier. Landscaping shall be located so as not to impede vehicular sight distance to the satisfaction of the Traffic Engineer.*
22. *Prior to the final of building permits, the applicant shall schedule an inspection by the Code Enforcement Division to confirm that all landscaping was installed in accordance with the approved plan.*
23. *Reclaimed water shall be used whenever available, assuming it is economically feasible.*

24. Water leaving the project site due to over-irrigation of landscape shall be minimized. If an incident such as this is reported, a representative from the Code Enforcement Division shall visit the location, investigate, inform and notice the responsible party, and, as appropriate, cite the responsible party and/or shut off the irrigation water.
25. Watering shall be done during the early morning or evening hours (between 4:00 p.m. and 9:00 a.m.) to minimize evaporation the following morning.
26. All leaks shall be investigated by a representative from the Code Enforcement Division and the property owner or operator shall complete all required repairs.
27. Water shall not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards.
28. *Landscaping and plant selections shall be consistent with the applicable landscaping recommendations set forth by the Mariner's Mile Strategic Vision and Design Framework.*
29. New utility connections shall be placed underground unless the Public Works Department determines that undergrounding the connection is physically infeasible. Appurtenant and associated utility equipment such as transformers, utility vaults, terminal boxes, meter cabinets shall be placed underground unless the Public Works Department determines that undergrounding the appurtenant and associated equipment is physically infeasible. If appurtenant and associated utility equipment cannot be placed underground, the equipment shall be located in the least visible location practical and screened from public view on-site and off-site by fencing or landscaping to the satisfaction of the Community Development Director.
30. *The three existing power poles and overhead power lines shall be removed and the power lines shall be underground.*
31. All ground-mounted equipment including, but not limited to backflow preventers, vents, air handlers, generators, boilers, trash bins, transformers shall be screened from view behind and fully below the top of a screen wall or a solid hedge. Screen walls shall be of same or similar material as adjacent building walls and covered with vines when possible. Chain link fencing with slats is not permitted.
32. *All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets within the mechanical screening equipment enclosure illustrated on the approved plans, and shall be sound attenuated in accordance with Chapter 10.26 of the Newport Beach Municipal Code, Community Noise Control.*
33. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

34. No outside paging system shall be utilized in conjunction with this development.
35. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
36. The operator of the development shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by tenants, patrons, food service operations, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.
37. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
38. *All trash shall be stored within the proposed trash enclosure located within the lower level of the parking structure or other approved enclosure. The trash dumpsters shall have a top, which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.*
39. *Food uses shall be required to provide temporary refrigerated trash storage to control odors associated with food wastes, unless otherwise approved by the Community Development Director.*
40. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
41. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
42. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the

provisions of Title 14, including all future amendments (including Water Quality related requirements).

43. *To minimize conflict within the parking structure, refuse collection and deliveries for the facility utilizing large vehicles shall be allowed between the hours of 6:00 a.m. and 10:00 a.m., daily, unless otherwise approved by the Community Development Director, and may require an amendment to this Site Development Review and Conditional Use Permit.*
44. *Storage outside of the building or the parking structure shall be prohibited.*
45. All proposed signs shall be in conformance with the provision of Chapter 20.42 of the Newport Beach Municipal Code and shall be approved by the City Traffic Engineer if located adjacent to the vehicular ingress and egress.
46. The final location of the signs shall be reviewed by the City Traffic Engineer and shall conform to City Standard 110-L to ensure that adequate sight distance is provided.
47. Lighting shall be in compliance with applicable standards of the Zoning Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. "Walpak" type fixtures are not permitted. Parking area lighting shall have zero cut-off fixtures.
48. The site shall not be excessively illuminated based on the outdoor lighting standards contained within Section 20.30.070 of the Zoning Code, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
49. Prior to the issuance of a building permits, the applicant shall prepare photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are "1" or less at all property lines.
50. *Any proposed illumination of the cupola and tower features shall consist of soft accent lighting so as not to become a visual disturbance to the views of the adjacent residences*
51. Prior to issuance of the certificate of occupancy or final of building permits, the applicant shall schedule an evening inspection by the Code Enforcement Division to confirm control of all lighting sources.
52. *A covered wash-out area for refuse containers and kitchen equipment, with minimum useable area dimensions of 36-inches wide, 36-inches deep and 72-inches high, shall be provided for all food uses, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Official and Public Works Director in conjunction with the approval of an alternate drainage plan.*

53. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District.
54. *The exhaust systems for any food uses shall be installed with pollution control units to filter and control odors.*
55. The construction and equipment staging area shall be located in the least visually prominent area on the site and shall be properly maintained and/or screened to minimize potential unsightly conditions.
56. A six-foot-high screen and security fence shall be placed around the construction site during construction.
57. Construction equipment and materials shall be properly stored on the site when not in use.
58. *To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Mariner's Pointe Project including, but not limited to, the approval of General Plan Amendment No. GP2010-009, Code Amendment No. CA2010-009, Site Development Review No. SR2010-001, Conditional Use Permit No. 2010-024, Variance No. 2010-004, and Parcel Map No. 2010-008; and/or the City's related California Environmental Quality Act determinations, the certification of the Mitigated Negative Declaration and/or the adoption of a Mitigation Monitoring Program for the project. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.*

Fire Department Conditions

59. Elevators shall be gurney-accommodating in accordance with Article 30 of the California Building Code (2007 edition).
60. Fire flow shall be provided to the property in accordance with Newport Beach Fire Department Guideline B.01.
61. *Fire sprinklers shall be installed throughout the commercial building and parking structure.*

62. *Fire apparatus access is required onto the property. The first level of the parking structure shall accommodate an inside turning radius of 20 feet and an outside turning radius of 40 feet. A clear ceiling height of 13 feet 6 inches shall be required.*
63. A manual fire alarms system is required that activates the occupant notification system in Group "M" occupancies when the combined occupant load of all floors is 500 or more persons or the Group "M" occupant load is more than 100 persons or below the lowest level of exit discharge.
64. *The proposed fire curtain between the parking structure and the exit corridor shall require activation by a smoke detector, unless deemed unnecessary by the Fire Marshall. A smoke detector in this location may be subject to nuisance alarms from car exhaust, which can result in false alarm fees from the City.*

Building Division Conditions

65. The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements.
66. Prior to the issuance of grading permits, a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water Quality Control Board for approval and made part of the construction program. The project applicant will provide the City with a copy of the NOI and their application check as proof of filing with the State Water Quality Control Board. This plan will detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.
67. Prior to issuance of grading permits, the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.
68. A list of "good house-keeping" practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of storm water away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.
69. The applicant shall comply with SCAQMD Rule 403 requirements as follows:

Land Clearing/Earth-Moving

- a. Exposed pits (i.e., gravel, soil, dirt) with five percent or greater silt content shall be watered twice daily, enclosed, covered, or treated with non-toxic soil stabilizers according to manufacturers' specifications.
- b. All other active sites shall be watered twice daily.
- c. All grading activities shall cease during second stage smog alerts and periods of high winds (i.e., greater than 25 mph) if soil is being transported to off-site locations and cannot be controlled by watering.
- d. All trucks hauling dirt, sand, soil, or other loose materials off-site shall be covered or wetted or shall maintain at least two feet of freeboard (i.e., minimum vertical distance between the top of the load and the top of the trailer).
- e. Portions of the construction site to remain inactive longer than a period of three months shall be seeded and watered until grass cover is grown or otherwise stabilized in a manner acceptable to the City.
- f. All vehicles on the construction site shall travel at speeds less than 15 mph.
- g. All diesel-powered vehicles and equipment shall be properly operated and maintained.
- h. All diesel-powered vehicles and gasoline-powered equipment shall be turned off when not in use for more than five minutes.
- j. The construction contractor shall utilize electric or natural gas-powered equipment instead of gasoline or diesel-powered engines, where feasible.

Paved Roads

- k. All construction roads internal to the construction site that have a traffic volume of more than 50 daily trips by construction equipment, or 150 total daily trips for all vehicles, shall be surfaced with base material or decomposed granite, or shall be paved.
- l. Streets shall be swept hourly if visible soil material has been carried onto adjacent public paved roads.
- m. Construction equipment shall be visually inspected prior to leaving the site and loose dirt shall be washed off with wheel washers as necessary.

Unpaved Staging Areas or Roads

- n. Water or non-toxic soil stabilizers shall be applied, according to manufacturers' specifications, as needed to reduce off-site transport of fugitive dust from all unpaved staging areas and unpaved road surfaces.

Public Works Conditions

71. *The parking layout and circulation shall comply with City Standard STD-805-L-A and STD-805-L-B. The vehicular ramps within the parking garage should be a minimum of 24 feet wide. Ramp slopes shall not exceed 15-percent maximum. The maximum percent change is 11-percent at a minimum of five-foot intervals. The five-foot interval shall continue across the entire ramp. Parallel parking spaces shall be 8 feet wide by 22 feet long.*
72. *Prior to the issuance of a Building Permit, the final parking layout and circulation shall be subject to the review and approval by the City Traffic Engineer.*
73. *Prior to the issuance of a building or grading permit, a final valet operations plan is required to be reviewed and approved by the City Traffic Engineer. Any future changes to the approved valet plan shall be reviewed and approved by the Community Development Director and Traffic Engineer. The applicant shall immediately resolve any valet operational issues that impact the public right-of-way.*
74. *The ceiling height of the first level of the parking structure shall maintain an unobstructed vertical clearance of 14 feet clear.*
75. *Prior to the issue of a building permit, the applicant shall obtain approval from the adjacent property owner for the proposed lane drop extension and sidewalk along West Coast Highway running through the property and shall obtain an easement/dedication for the City for Street and Sidewalk purposes.*
76. *The driveway entrances to West Coast Highway shall be designed to accommodate vehicular sight distance per City Standard STD-110-L. All planting shall be limited to 24 inches in height maximum within the limited use area. Walls or other permanent obstructions shall be limited to 30 inches in height maximum within the limited use area.*
77. *The westerly outbound only driveway shall be narrowed to 20 feet maximum and appropriate signage shall be installed to discourage vehicles from entering the driveway, unless otherwise approved by the City Traffic Engineer.*
78. *The proposed striping changes on West Coast Highway shall be reviewed and approved by Caltrans prior to implementation.*
79. *The water feature and other non-standard improvements within the West Coast Highway right-of-way requires approval from the State Department of Transportation (Caltrans).*

80. *Water feature along Dover Drive shall require the review and approval of a Building Permit and requires an encroachment permit and agreement from the City of Newport Beach Public Work's Department.*
81. All landscaping within the public right-of-way shall be reviewed and approved by the Public Works Department and Municipal Operations Department. An encroachment agreement is required for all planting within the public right-of-way.
82. *No permanent structure shall be permitted within the required 10-foot-wide sewer easement area, unless otherwise approved by the Public Work's Department. The applicant is required to replace the 8-inch sewer main from the manhole located on the property line between 303 and 311 Kings Road and the manhole located on West Coast Highway. Knock-out panels or other improvements approved by the Public Works Department shall be installed along the entire length of the required 10-wide sewer easement. The final design of the parking structure shall take into account the sewer main and shall be subject to further review and approval by the Public Works Department.*
83. *Applicant shall bear all cost (design and construction) of the necessary water system and sewer improvements needed to support the proposed project, including minimum fire flow requirements. The water system improvements may include installation of a regulator and water main extension. The final design shall be reviewed and approved by the Public Works Department.*
84. Prior to issuance of demolition and grading permits, the applicant shall submit a construction management and delivery plan to be reviewed and approved by the Public Works Department. The plan shall include discussion of project phasing, parking arrangements for both sites during construction, and anticipated haul routes. Upon approval of the plan, the applicant shall be responsible for implementing and complying with the stipulations set forth in the approved plan.
85. Traffic control and truck route plans shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagman.

Parcel Map Conditions

86. This Parcel Map shall expire if the map has not been recorded within three years of the date of approval, unless an extension is granted by the Community Development Director in accordance with the provisions of Section 19.16 of the Newport Beach Municipal Code.
87. A parcel Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer

preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**

88. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Section s 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
89. All improvements shall be constructed as required by Ordinance and the Public Works Department.
90. *The sidewalk, curb and gutter shall be reconstructed along the entire project frontage of West Coast Highway and Dover Drive. The sidewalk shall be a minimum width of 10 feet on West Coast Highway and 12 feet on Dover Drive. Limits of reconstruction are at the discretion of the Public Works inspector.*
91. *All unused driveway approaches along Dover Drive and West Coast Highway shall be replaced with a new driveway plug per City Standards.*
92. All new driveway approaches shall be constructed per City Standard STD-166-L.
93. All existing overhead utilities shall be undergrounded.
94. An encroachment permit is required for all work activities within the public right-of-way.
95. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
96. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
97. All on-site drainage shall comply with the latest City Water Quality requirements.
98. All proposed non-standard improvements within the public right of way, are subject to further review and approval by the Public Works Department and requires an encroachment permit and encroachment agreement.
99. *A 10-foot-wide sewer easement shall be provided through the lower level parking garage to accommodate the existing sewer main running through the property and connecting to West Coast Highway.*

100. *The applicant shall dedicate to the City a 20' by 27' area located at the southwest corner of the property to accommodate the new transition on West Coast Highway.*
101. *Relocation of the safety lighting on West Coast Highway requires approval from Caltrans.*

Mitigation Measures

102. *The applicant shall comply with all mitigation measures and standard conditions contained within the approved Mitigation Monitoring and Reporting Program of the adopted Mitigated Negative Declaration (Exhibit A) for the project.*

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2011-86 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 9th day of August, 2011, and that the same was so passed and adopted by the following vote, to wit:

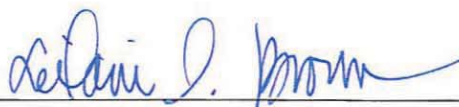
Ayes: Hill, Rosansky, Selich, Curry, Mayor Henn

Noes: Gardner, Daigle

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 10th day of August, 2011.



City Clerk
Newport Beach, California

(Seal)



